



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2022-0609; FRL-10025-02-R9]

#### Determination To Defer Sanctions; Arizona; Maricopa County; Reasonably Available

#### Control Technology - Combustion Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final determination.

**SUMMARY:** The Environmental Protection Agency (EPA) is making an interim final determination that the Arizona Department of Environmental Quality (ADEQ) has submitted revised rules on behalf of the Maricopa County Air Quality Department (MCAQD or County) that correct deficiencies in its Clean Air Act (CAA or Act) state implementation plan (SIP) provisions concerning reasonably available control technology (RACT) ozone nonattainment requirements for controlling emissions of oxides of nitrogen (NO<sub>x</sub>) from combustion equipment and internal combustion engines. This determination is based on a proposed approval, published elsewhere in this *Federal Register*, of MCAQD's Rules 323 and 324 which regulate these source categories. The effect of this interim final determination is that the imposition of sanctions that were triggered by two prior disapprovals by the EPA, the first in 2020 for these two rules, and the second in 2021 for the County's 2017 determination that it was implementing RACT for major sources of NO<sub>x</sub>, are now deferred. If the EPA finalizes its approval of MCAQD's submission, relief from these sanctions will become permanent.

**DATES:** This rule is effective on [Insert date of publication in the *Federal Register*].

However, comments will be accepted on or before [Insert date 30 days after date of publication in the *Federal Register*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0609 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online

instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at [gong.kevin@epa.gov](mailto:gong.kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

## **Table of Contents**

- I. Background
- II. The EPA’s Evaluation and Action
- III. Statutory and Executive Order Reviews

### **I. Background**

On July 20, 2020 (85 FR 43692), the EPA issued a rule promulgating final disapproval and conditional approvals for the MCAQD regulations listed in Table 1 that had been submitted by the ADEQ to the EPA for inclusion into the Arizona SIP.

TABLE 1 – COUNTY RULES WITH PREVIOUS EPA ACTION

Rule #	Rule Title	Revised	Submitted	EPA Action in 2020
322	Power Plant Operations	November 2, 2016	June 22, 2017	Disapproval
323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources	November 2, 2016	June 22, 2017	Conditional Approval
324	Stationary Reciprocating Internal Combustion Engines (RICE)	November 2, 2016	June 22, 2017	Conditional Approval

Areas classified as “Moderate” for nonattainment for an ozone standard must implement reasonably available control technology (RACT) for major sources of NO<sub>x</sub> and volatile organic compounds. The Phoenix-Mesa area is classified as “Moderate” nonattainment for the 2008 ozone standard. The 2020 action on the regulations in Table 1 supported our subsequent rulemaking on the requirement that the MCAQD demonstrate their implementation of RACT, in a submittal called a “RACT SIP,” for emissions sources in ozone nonattainment areas under the Act, specifically for major sources of NO<sub>x</sub>.<sup>1</sup> In the 2020 final rule, we determined that the submitted County rules included several deficiencies that precluded our approval of the rules into the SIP, and thus the County failed to implement RACT for major sources of NO<sub>x</sub>. Therefore, our 2021 action on the RACT SIP included a disapproval of the SIP revision under title I, part D of the Act, relating to requirements for nonattainment areas. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, this disapproval action on the RACT SIP element under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action's effective date of February 8, 2021, and highway sanctions 6 months later.

On June 23, 2021, the MCAQD revised Rules 323 and 324 and on June 24, 2021, ADEQ

<sup>1</sup> See, 86 FR 971 published on January 7, 2021.

submitted the SIP revision to the EPA for approval into the Arizona SIP as described in Table 2 below.

TABLE 2 - SUBMITTED RULES

Rule #	Rule Title	Revised	Submitted
323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources	June 23, 2021	June 30, 2021
324	Stationary Reciprocating Internal Combustion Engines (RICE)	June 23, 2021	June 30, 2021

The revised rules in Table 2 are intended to meet the commitments to revise the rules we had previously based our conditional approval on in our 2020 action. In the Proposed Rules section of this ***Federal Register***, we have proposed approval of the revised MCAQD Rules 323 and 324. Based on this proposed approval action (and our proposed action approving Rule 322<sup>2</sup> into the Arizona SIP that regulates other major sources of NO<sub>x</sub> at power plants, which are not addressed by Rules 323 or 324), we are also taking this interim final determination, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our 2021 action's disapproval of the major sources of NO<sub>x</sub> RACT element, because we believe that the submittal corrects the deficiencies that triggered such sanctions.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed full approval of MCAQD's submittal demonstrating RACT for major sources of NO<sub>x</sub> with respect to the title I, part D deficiencies identified in our 2021 action, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our 2021 action would be permanently terminated on the effective date of our final approval of

---

<sup>2</sup> February 8, 2022 (87 FR 7042).

the major sources of NO<sub>x</sub> RACT element.

## **II. The EPA's Evaluation and Action**

We are making an interim final determination to defer CAA section 179 sanctions associated with our disapproval action on January 7, 2021, of MCAQD's RACT demonstration for major sources of NO<sub>x</sub> with respect to the requirements of part D of title I of the CAA. This determination is based on our previous proposed approval of Rule 322 and this concurrent proposal to fully approve Rules 323 and 324, which resolves the remaining deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that MCAQD's submittal of Rules 322, 323 and 324 address the conditional approval issues and deficiencies under part D of title I of the CAA identified in our 2020 and 2021 actions and is fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA

because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

### **III. Statutory and Executive Order Reviews**

This action defers sanctions and imposes no additional requirements. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

- Is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- Is subject to the Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section II of this preamble, including the basis for that finding.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: **July 27, 2022.**

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

[FR Doc. 2022-16493 Filed: 8/3/2022 8:45 am; Publication Date: 8/4/2022]